

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,
Plaintiff,

v.

Civil Action No. 3:17-01362

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*
Defendants.

CABELL COUNTY COMMISSION,
Plaintiff,

v.

Civil Action No. 3:17-01665

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*
Defendants.

**CT2 PLAINTIFFS' MOTION TO COMPEL
CUSTODIAL DEPOSITION OF HEALTHCARE DISTRIBUTION ALLIANCE
TO ESTABLISH AUTHENTICATION OF EVIDENTIARY FOUNDATION OF
DOCUMENTS PRODUCED IN MDL2804**

COME NOW Plaintiffs, City of Huntington (City) and Cabell County Commission (County) and request this Court enter an order compelling third-party, Healthcare Distribution Alliance ("HDA"), to designate and produce a witness(es) to establish authentication and the evidentiary foundation for certain documents produced in this litigation. In support of their motion, Plaintiffs state as follows:

1. The bench trial of this matter is set to begin on October 19, 2020. Plaintiffs have attempted and failed to reach an agreement with the Defendants regarding the authentication, foundation, and admissibility of documents produced by HDA in this litigation.
2. Plaintiffs filed and served a Notice of 30(b)(6) Deposition of the Healthcare Distribution Alliance before the deadline for the conclusion of fact witness depositions (ECF 785)

to protect the record and cure any evidentiary defects. Meanwhile, Plaintiffs provided HDA and the Defendants with a list of seventy (70) document families¹ seeking a stipulation on the following:

- (a) The HDA documents were produced in the MDL2804 litigation pursuant to the Federal Rules of Civil Procedure. FRE 902(8); In re 3M Combat Arms Earplug Prods. Liab. Litig., No. 3:19md 2885, 2020 U.S. Dist. LEXIS 10337, at *6 n.8 (N.D. Fla. Jan. 22, 2020);
- (b) The HDA documents are true and accurate duplicates of the originals. FRE 901(b)(1); FRE 1001(d)-(e); United States v. Oriach, 222 F. App'x 312, 314 (4th Cir. 2007);
- (c) The HDA documents were made and maintained in the ordinary course of business. FRE 803(6); FRE 902(11); Little v. Cellco P'ship, 304 F. Supp. 3d 508, 512 n.2 (S.D. W. Va. 2018); and
- (d) No other witness is required to present these documents to the Court; nonetheless, Defendants reserve the right to object on FRE 401, 402 and/or 403.

3. Plaintiffs requested available deposition dates from both HDA and the Defendants by email dated September 8, 2020. To date no response has been received. Time is of the essence.

WHEREFORE, Plaintiffs request this Court enter an order compelling HDA to produce one or more witnesses to authenticate and lay the evidentiary foundation for its documents prior to the trial of this matter and/or other relief as may be afforded under federal law.

¹ This list was pared down and presented as an exemplar in an attempt to establish an efficient process for the admission of (undisputed) documents during the bench trial. Plaintiffs acknowledge its burden of proof under the Federal Rules of Evidence as well as the Defendants' right to insist on strict compliance with the same.

Dated: August 20, 2020

Respectfully submitted,

THE CITY OF HUNTINGTON

/s/ Anne McGinness Kears

Anne McGinness Kears (WVSB No. 12547)

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CABELL COUNTY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, the foregoing was filed electronically via the CM/ECF electronic filing system and served on all counsel registered in the system as well as on all counsel via email to plaintiffs' listserv at mdl2804discovery@motleyrice.com and defendants' listservs at track2opioiddefendants@reedsmith.com. Counsel for HDA is served via email:

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/s/ Monique Christenson

Monique Christenson (SC Bar No. 104063)

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